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Supreme Court, U.S.
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10-664

No._____

IN THE

SUPREME COURT of the UNITED STATES

JOSEPHINE JOYCE, Petitioner.

V.

J.C. PENNEY CORP. INC., Respondent.

ON PETITION FOR WRIT OF CERTIORARITO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The United States Court of Appeals for the 7th Circuit has entered a decision that conflicts with other United States Court of Appeals within the circuit. U.S. Court of Appeals for the 7th Circuit has abused its discretion by excluding physicians testimony due to the physicians not reciting the phrase; "to a reasonable degree of medical certainty". "It is required in Illinois". The phrase is not codified in the Rules of Evidence, FRE 702[2]. Petitioner's physicians testified "**yes**" more than once, another testified "**I have no doubt**", another testified "**that is the cause**", and another testified "**most likely than not**". More than 12 physicians were deposed in this case. This is prejudicial and unjust to the Petitioner. A fair and just trial would/could not be given. Physicians who testified in deposition that **he believed** . . .was properly permitted to testify at trial . . . injury. Kokotkwicca v Leprino Foods Co., App. 4th Dist. (1987), 113 IL Dec 586, 162 ILL. App 3d 493, 515 NE 2d 395.

Question 1: The phrase is not codified within the rules law. Did the Court abuse its discretion by excluding the physicians' testimony?

The Court of Appeals for the 7th Circuit abused its discretion by asserting the capacity of expert and expertise competency to treating physicians, being that of an **expert**[2] medical witness. Conflicts within circuit. (Ryan Ena v James G, Linn, Wisconsin Court of Appeals No. 01-2781 (2002), "obstetricians do not diagnose and treat neurological injuries." Physicians, and medical expert testimony should be within the scope of their own expertise. Physicians testified **they have no expertise**[2], or expertise that over laps into other medical fields. In the Petitioners case the physician's were asked very **improper questions**[1] and their testimonies were admitted into evidence rather than excluded. Physician deposition excerpts below. This is not justice by laws. **Example**; A foot doctor giving the cause for a patient's ear ache. Pursuant to; 735 ILCS 5/1-105 (from Ch. 110, par. 1-105) Sec. 1-105. Enforcement of Act and rules.

Question 2; Did the courts' abuse its discretion by not applying FRE 702[2] and allowing questions that were not within the scope of the physicians' medical practice or expertise?

Speculation and conjecture are out, according to the Illinois Appellate Court. Not Codified.

The Court of Appeals for the 7th Circuit abused its discretion. "Speculation is out". The question of **onset** which is speculative[1] can only get an answer of speculation. The question invites speculation and should be excluded. 98 C.J.S Witnesses[1]. The Respondent's questions were more than 50%[1] speculative. When used in relation to an onset of arthritis and or other medical conditions. No medical expert or treating physician can answer this actually or exactly. Some diseases take years to manifest and show any symptoms. Incompetent questions were accepted by the lower courts. **Example**; what time will it rain today? Speculation. You can't tell me with certainty what horse will win the race, can you? Fairness to parties should apply. U.S. Const. amend. XVI (AP. G. p. 18a) Equal protection under the law. The administration of justice was not exercised for the Petitioner.

Question 3; In the application of Illinois Appellate Court law (absent the code). "Speculation[1] will not defeat summary judgment on causation". Does this apply to speculative questions or speculative answers, or both?

PARTIES TO THE PROCEEDING

The caption contains the name of the Petitioner whom is a citizen of the United States and resides in the state of Illinois. The U. S. Court of Appeals has jurisdiction to decide this case pursuant to 28 USC 1291.

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American Journal of Industrial Medicine. MD's. Patrick M. Foye, Todd P. Stitik, Scott F. Nadler D.O., Boqing Chen MD PhD. Vol.38, Issue 1, pgs. 108-111 (2000).. . . .18

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West, 22 F. 3d 775 (7th Cir. 1994) . . . . . .
. . . . . .AP H p.19a

Petitioner, Josephine Joyce, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The decision of the court of appeals denying Petitioner's Petition for Rehearing is unreported at (AP. A. p.1a). Remanded to district from the CA (AP. B p.2a). The opinion of the trial court on limited remand from the U. S. Court of Appeals of the Seventh Circuit reported at (AP. C, 3a-6a).

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit denying the petition for rehearing was enter on August 19, 2010. This petition was filed within 90 days of entry of judgment. Therefore, the jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254, and Supreme Court Rule 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Const., Amend. XIV, Section 1. . . . No state shall make or enforce any law which shall abridge the privileges . . . citizens of the United States; nor shall any State deprive any person . . . without due process of law; . . . (AP. G. p18a).

State of IL. Constitution. Bill of rights (Dec. 15, 1970) provides: Article I. Sec. 2 Due process and equal protection under the law . . . (AP. G p.18a). Article I, sec. 12 Right to remedy and justice . . . (AP. G p.18a).

735 ILCS 5/1-105 Enforcement of Act and rules . . . . . .at AP. G p.16a.

735 ILCS 5/2-617. Seeking wrong remedy not fatal . . . at AP. G p.17a.

STATEMENT OF THE CASE

Background: Petitioner entered J. C. Penney retail store November 1, 2003, at the Yorktown Mall in Lombard Illinois. While standing examining clothing, I was suddenly and unexpectedly hit from behind without any warnings by an employee pushing a display unit. I felt an immediate shock sensation, saw a flash of light started jerking, and swerving (twisting) her body while losing her balance. I reached to grab the rack in front of her. I went down on the floor on her left knee. I was in a daze for minutes. Customers helped me. I(Petitioner) purchased an item to date my being in the store. I stopped shopping. After being at home, my pains increased with tingling to my face and body. Within 24 hours of the incident I went to the E/R of the hospital and was admitted into the hospital.

Procedural background: Petitioner filed a law suit in the Ill. state court on October 25, 2005. Due to the diversity involved, the case was transferred to the district court on November 21, 2005. The trial court granted a partial summary judgment to the Respondent's on June 25, 2008. Brief filed in the court of appeals on Jan. 25, 2010. The case was remanded to the district court on April 29, 2010.

The petitioner filed a petition for rehearing on Aug. 16, 2010. Petition Denied. **No legal issues were resolved**. Controversy (and contradiction) exists within the circuits on all issues and within sister states. The phrase "Reasonable medical certainty," is **not codified** within the federal rules of evidence. The court did not review **the tactics** of how the answers were ascertained. This was an abuse of discretion, unjust and prejudicial to the Petitioner. The (13) physicians deposed did not **recite** in their answers the phrase of "to a reasonable degree of medical certainty", which is not used in their medical practice for diagnosing. The court excluded their testimonies of evidence.

REASON FOR GRANTING THE WRIT.

I Believe this Supreme Court of the United States will justly review the facts submitted by the Petitioner. Violations of rules in law and laws not codified are clearly illustrated within the issues presented. Conflict exist within the circuits due to confusion, exceptions, and wrongful acceptances. Sure, they are busy (lower courts), but an abuse of discretion is not exercising their legal given functions. No persons are exempt. The issues are crucial for the administration of justice to all people. The Constitution of the U. S. guarantees my rights for justice by the laws. This court holds the highest authority to resolve an abuse of discretion by the lower courts.

Eighteen (18) witnesses were deposed. According to 98 C.J.S. WITNESSES [1 (and law)] questions that answer itself are improper and should be excluded[1]. Leading questions of '**you cannot give an opinion**[1]'(footnote p.8) , '**you don't know**[1]', '**you're not able to give an opinion**'[1], '**you don't have**[1]', "do you agree with me" and etc.[1] should be excluded. Improper usage[1] three (3) times may be a mistake, more than 45 times is intent[3]. Leading improper questions on the law of direct examination[1] should be excluded, especially as to material facts in dispute.

There can be no remedy in law when the laws and rules are not enforced by the courts. Excerpts taken from deposition transcripts below are evidentiary to the above issues of law that were not enforced. Pursuant to; 735 ILCS 5/1-105 (from Ch. 110, par. 1-105) Sec. 1-105. Enforcement of Act and rules. (AP. G. p16a) Due process of law AP. G. p.18a).

A **lawyer** is obligated to zealously represent a client, but within the bounds of the rules of law. Rutledge v. St. Anne Hospital 230 Ill App 3d 786,794 (1992).The **failure** to comply with the

local rules is not merely a "harmless technicality", but can be a fatal mistake. Defendant-Appellee's attorneys did not ask questions, instead physicians were told repetitively **they "cannot answer[1] within a degree of medical certainty", "you cannot give[1] an opinion", "You don't have an opinion" , "you are not able"[1],**

"you can't say", "you don't know", preceding questions of reasonable medical certainty. The questions below **violate** rules of law. Questions and answers to these questions were submitted by the defendant-appellee's and accepted by the courts' in their material facts, that were used for purposes of a summary judgment.

Example; asking a foot doctor what caused the patient to have an ear ache[1]?

The law of direct examination[1] states this form (example below) being suggestive, and answers itself, should be excluded.

Example; 1. Did you get your first tooth at 6 mos. old?

Questions that answer itself should be excluded. C. J. S. 98 Witnesses Sec 347, P53 Vol. XCVIII. Questions which are indefinite and uncertain should be excluded. C. J. S. 98 Witnesses Sec 328, P. 35 Vol. XCVIII. Question indicating opinion, Bias, or Tending to Discredit Witness Sec. 347 P.60.

FRE 611. Mode and Order of Interrogation, Presentation. (a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) **protect witnesses** from **harassment** or undue(¶-1p.9) **embarrassment**. Item (3) calls for a judgment under the particular circumstances whether interrogation **tactics** entail harassment or undue embarrassment. Pertinent circumstances include the importance of the testimony, the **nature of the inquiry**, its relevance to credibility, waste of time and **confusion**.

None of the Physicians deposed were ill, hostile, old, lacked understanding per ignorance or illiteracy, needed an interpreter, very young, or reluctant. Description of Drs. (AP. F p. 15a.)

All of the physicians have an ongoing medical practice within the clinics, or private practice, and hospitals. They examine, refer, do consultations, surgery and treat patients'. They were not hired by the Petitioner for expert testimony. Their opinions were honest. They did not recite phrases, or try to manipulate or alter any medical issues. They did not try to intimidate, harass or avoid questions. They were forth coming in explaining that which the examiners either did not know, but should have

known or understand. The same was not reciprocated. They were insulted with "you don't know", "you're not able", and "you can't give". It is all written on paper, and those are the facts.

Improper questions[1] should be excluded especially as to material facts in dispute. This rule applies in the examination. . . as well as in the examination of any other witness and is recognized **and enforced** in criminal . . . civil cases . . . People v Bennett, 121 NE 2d 595, 3 ILL 2d 357 (1954).

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1. **LAW OF DIRECT XAMINATION**; Grounds for objection (NUC PRO TUNC). The questions are deliberate to seek a 'NO' answer. Definition of improper questioning defined as; Assertion of fact/opinion Ambiguous, Confusing, unintelligible, speculative, Repetitious (overly), leading, unduly Suggestive, Speculative. **98 C.J.S. Witnesses**. Particular phrases, . . .may have the effect of indicating what answer counsel desires and thus render the question objectionable.. Phrases such as; didn't, **does it not**, did you, **you didn't**, have you or not, was not, **as a matter of fact**, isn't it a fact, it is not a fact, was it not a fact that, the facts are, that is true, isn't it, wouldn't be, **don't you know**, you don't mean, state whether or not, you remember . . . you did not say, . . . didn't you, **you don't know**, of course, **you're not able**. As a general rule, **on direct examination** of a witness, leading questions that are **improper should be excluded**.

2. **FRE 702**. Testimony by Experts. If scientific, technical, or other specialized knowledge will assist the trier of fact to **understand the evidence** or to determine a fact in issue, a witness **qualified** as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Depositions were taken of thirteen (13) treating physicians by the Respondent's attorneys. Excerpts from those depositions are noted below. No medical expert or treating physician (¶-1 p7) can answer to an **actual onset** of particular diseases being that of arthritis and herniated disc. The question is speculative. According to the Illinois Appellate Court 'speculation is out'.

When a question is made in error three (3) times, it may be harmless, the same question asked more than forty-five (45) times is 'no error' it is intent[3], and in **violation** of the rules of laws[1]. The results were prejudicial and detrimental to the petitioner's case. The trial court's order on a partial summary judgment for the defendant came about from the questions propounded below. The questions are **improper and in violation of the rules of law**[1].

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3. Rules of Professional Conduct. (AP. H. 19a-20a)

4. Proximate Cause: The name given to the direct cause of an accident, or incident leading to injury, is referred to as 'proximate'. (The term proximate has long been known to mean near, or in the vicinity of, not actual).

Respondent's attorneys Kathleen Reid and Matthew Schreck are the examiners[3].

Dr. Shea; "can you . . . you can't[1] give an opinion to reasonable degree . . . to onset...bulging disk . . . is that[1] correct?" Dep.25:5-8, 49:2-6. **Answer**; . . . fact . . . history states[4]...injury and after injury...had these complaints...direct injury caused...her history. Dep. 49:7-10. **Question**"... You can't give an opinion[1]? Dep. 47:15-16 "**Answer**; . . . According to her history,[4] **she had an injury and she had these things go wrong . . .** ". Dep. 50:11-15

Dr. Ivancevic,: Not aware of any accident dep.17:14-24, 18-1-24, 19:1-1. **Question**; " . . . you can't give[1] an opinion," dep. 30:21-24, 31:1-2, 31:19-22. **Question**; " . . . Because you don't have[1] information . . . correct? "dep. 32:7-14.

Dr. Lussky; " . . . you don't obviously know[1], Dr the date of that herniation; correct"? Dep. 18:21-22. **Question**;"So you wouldn't be able[1] to give...you wouldn't be able[1] to give any opinion . . .reasonable...medical certainty[2] . . . caused. . .complaints. . .symptoms, correct?" Dep.13:3-7. **Answer**; " . . . she certainly can have a twisting injury to her back[4]. . . . you're not just injuring your foot." Dep. 14:13-15.

Dr. Blonsky; Question"Dr., you can't give[1] an opinion to a ... degree of medical certainty[2] . . . the date of onset . . . degenerative changes . . . is that correct[1]?" Dep.52:19-22 **Answer**: "Yes, I cannot .....You are asking a negative question

...so I will respond to it negatively" dep. 52:23-24, 53:1-1. " . . . you can't give[1] · · · date of onset . . . "? Dep. 53:2-7.

Question;"Dr. "you don't know[1] · · ·"dep. 53:16-19." . . . "you can't[1] give . . . "dep. 54:15-16 . . . "you cannot give[1] an opinion...degree of medical certainty...."dep. 54:18-23, 55:1-1, 56:6-11. "and you cannot[1] give an opinion to a reasonable . . . medical certainty[2] . . . sustained injuries . . . at a retail store in Nov. of 2003; would that be correct?" Dep. 54:18-23.

Answer; "well, I would say no, that's not correct..., whatever the date was. There are certainly documents[4] at that time ,contemporaneous, documents, which indicate that she did sustain an injury and she have complaints" ..." dep. 55:4-17. **Question**;" . . . you can't[1] . . . opinion . . . "dep. 55:19-24, 56:1- 4... **Question**; "you can't give an opinion[1]..."dep. 56:6-11.

Dr. **Gafoor**; **Question** " you can't give[1] an opinion .... certainty as to the date of onset of . . . herniated disc; is that correct?" Id. 102:4-6. **Question**; **Dr.** ... "you can't say[1] without looking ... records" dep.78:4-6. **Dr. Gafoor** [2]"no expertise; reading MRI films, CT scans, orthopedic, pain mgmt., or neurological conditions. Dep. 121: 12-24." **Answer**; "I cannot access . . . very hard to say . . . same pain or new pain or different pain," dep. 69:14-16. "By no means, however, is all low back pain caused by degenerative joint disease or by degenerative disc disease, let alone disc herniation" (Ap. E. p.13a)

Dr. Molnar; Question; "Would it be accurate . . . to say . . . and . . . today. . . medical history prior to Nov. 2003 . . . you didn't[1] get any documentation", Dep. 14:13-20. **Question**; "are you able". . . " dep.33:4-8 **Dr. states** "patients who have chronic pain for long periods. . . will have impairment ...daily activities, living . . . have depression[4] associated with it as well." Dep.43:3-7. **Question**; " . . . different test . . . would you agree[1] . . . subjective in nature... ? " **Answer**; Some are subjective ...are obviously objective." Dep. 52:22-24, 53:1-4.

Question; Dr. " . . . but you can't give[1] an opinion . . . and the onset of that date . . . correct?" Dep. 69:3-9. **Question**; . . . conditions, is that correct"? and in fact you don't even...know[1] ... dep. 69:11-13." **Question**;"and you can't[1] give an opinion and you have no opinion . . . correct[1]?" Dep. 70:8-10.

Dr. James Question; "What . . . exam reveal?" Dep. 25:11-11. **Answer**; ". . . lower back consistent with a herniated disk." Dep. 25:12-16 ""we found . . . positive[4]. . . nerve pressure . . . spine area due to herniation in most cases.". Dep. 25:24-24, 26:1-4. ". . . confirmation[4]. . . spine between L3 and L5...positive" Dep. 26:11-21. **Question**; "would you agree with me . . .[1]" dep.29:9-12. **Question**; ". . . "Dr. you cannot[1] give an opinion . . . is that correct[1]?" Dep. 30:13-16. **Question**; ". . .you cannot give[1] date of onset. . .,is that correct?" Dep.30:18-22. **Question**;". . .you cannot give[1]. . ., is that correct?" ". . .you cannot give[1]. . ." ". . you wouldn't

be able[1]. . . ". Dep. 31:1-124 "**Question**;. . .you cannot give[1]. . .degree...certainty "and you cannot[1] give an opinion. . ., correct?" Dep. 42:12-16 **Question**; ". . . date of onset, correct?" Dep. 42:2-10.

Dr. Solomon states; "No practice in orthopedics, neurosurgery, neurology." Dep. 14:14-20. Doctor specialty OB-GYNE, dep. 15:12-15. Not aware of accident, dep. 34:5-24, 35:1-16, 41:15-22" **Question**; . . ."You cannot give an opinion[1]" dep. 42:6-24, 43:1-7. Attorney knew doctor couldn't give an opinion. Dep. 42:6-23.

Dr. MC Carthy; not aware of accident, dep. 20:11-24, 21:1-23." Question . . ." Doctor you cannot[1] give an opinion to a reasonable degree of medical certainty . . ."dep.22:16-20, 22-24. (No expertise in skin diseases).

Dr. Prinz. Question "Dr. you can't give an opinion[1]..."dep. 44:17-22, 57:17-18. **Question** "Would it be fair to say that in total that you can't give[1] to a reasonable degree of medical or orthopedic certainty . . . sustained any type of injury .... the incident at the JC Penney in November 2003"? Dep.60:8-13. **Answer**; "I do think she had an injury in 2003 that caused pain, so I wouldn't go that far. I think she did have an injury . . . **I have no doubt[4]** ...in my mind, and **I think I could sate with medical certainty[4]** that she did have some injury to her body on that day". Dep. 60:14-23. **Question**; "you can't give[1] an opinion" . . . dep. 60:24-24, 61:1-1.

Dr. Lofland; "How did Ms Joyce come . . . or be evaluated . . . at clinic? Was it referral? . . . her own? **Do you not know**[1]?" Dep.41:4-7 **Question**"Dr. you cannot[1] give an opinion...." Dep.59:20-24, 60:1-2.

Dr. Ubilluz; Question "Are you able[1] Dr. to date Ms. Joyce hernition?" Dep15:18-19. "Are you able[1] to actually date her stenosis, like her L4-L5 bilateral stenosis?" dep. 15:21-22. Answer; "the accident . . . pushed them[4] . . . they are symptomatic now." Dep. 16:14-15 **Question**;" . . . Are you really able[1] to give an opinion . . . based upon the fact . . . three years after that accident?" Dep. 16:16-21. **Answer**; " . . .let me tell you . . . overlapping . . . present symptoms . . . probably the cause of it[4] . . ." dep. 17: 1-5.

Question; "what was the cause?" Dep. 17:6-6. **Answer**: "The accident at JC Penney[4]." Dep. 17:7-7. **Question**:, "And obviously[1] that opinion would change . . . view the entirety . . . medical records . . ." dep. 17:11-13. **Answer**; "It may change" dep. 17:14-14. **Question**; "...you're not able[1] to specifically date . . . disc herniations"? Dep. 22:15-17. **Answer**; It's not only her case, it's very hard to do that . . . have to resort . . . history provided . . . " Dep. 22:18-20. **Question**; "Sure but would you agree with me[1] Dr. that you're not able[1] to date it?" dep. 22:21-22. **Question;** "...are you able[1]...degree medical certainty[2] . . . lumbar condition related to ankle injury...JC Penney store 3 years prior?" Dep.32:19-22. **Answer**"...most likely than not[4] that was the case". Dep. 32:23-24, 33:1-6.

Dr. Espinosa ; Question" . . . you can't give[1] an opinion as to... the date of onset...herniated disc was, is that correct?"[1] dep. 53:11-13, 23-24, 54:1-3, 63:3-9. **Question;** "Dr. you can't give an opinion[1]... degree... actually... injury...in Nov. 2003, is that correct?" Dep. 64:21-24, 65:1-1. **Answer:** "...incident of Nov. 2003 caused herniated disc . . ." Dep. 65:2-14. **Question;** "But Dr. you don't know[1] . . . "Dep. 65:15-17. **Question:** "okay, would it be fair to say . . . really can't give[1] . . . additional films and records?" Dep. 65:22-24, 66:1-1. **Answer:** "If there is such a thing, yes." Dep. 66:3-3". **Question;** "Dr you can't get[1]...Is that correct? [1]" Dep 67:4-6, 15-19, 21-24, 68:1-2, **Answer;**". . . if she actually twisted her back[5] . . . possible, yes[4], dep:68:3-6."

Question; " . . . you would not be able[1] to give a reasonable . . . ,is that correct[1]"? Dep. 68:7-15. **Answer;**"...its possible, yes"[4], dep.70: 16-21. **Question** "But, you can't give[1] an opinion . . . dep.70:24-24, 71:1-5.

Dr. states;"...**no sign of malingering**..." Dep. 47:13-14.

Two **(2) years** to diagnose cervical spine herniated disc. Pierce Contractors, Inc. V Greene (1955 CA4 SC) 228 F2d 63. Thirty-five **(35)** months after accident. Bair v Employers' Liability Assur. Corp. (1959) La App 38 So. 2d 669.

Petitioner motioned the court; **deposition answers** are being **used in bad faith** by the Defendant's counsel in their material facts. Motion denied. Ambiguity in question based on

assumption not explained justified sustaining objection.

Swain v Tillett, 269 N.C. 46, 152 S.E.2d 297 (1967). People v Terczak, 96 ILL. App 2d 373, 238 NE 2d (1968).

Question "Do you feel there is any way that this tape recorder would be worth as much as $1.50?" was **stricken** as leading, suggested answer to witness. State v Jennings, 649 SW 2d 448 (Mo. Ct. App.1983)

Inaccurate statement used in material facts. This is just one, there are many. Respondent's attorneys states that the Petitioner did not complain about neck pain until Feb. 12, 2004. The Plaintiff complained of neck pain Nov. 2, 2003 at Hospital E/R, and Nov. 3, 2003 to Dr. Lussky, Id. 6:9-14.

Petitioner's claims aggravation. Injury includes aggravation of preexisting conditions, person more susceptible to injury than other persons. Owen v Rochester Penfield Bus Co., 304 NY 457, 108 NE2d 606, 608. (1952)

Preexisting condition don't bar recovery for **damages** arising out of aggravation. Oliver v Yellow Cab Co.

98 F2d 192 (1938, CA7 Ill). Reising v United States, 60 F. 3d 1241 (7th Cir. 1995). Hillard v Chicago City R. Co. (1911) 163 Ill App. 282.

Tort feasor is liable for injuries he causes, even

when those injuries consist of aggravation of preexisting condition. Parvin v. Sill, 93 Ill. Dec. 161, 486 NE 2d
262 ,138 Ill. App. 3d 325. Ill App 5 Dist (1985).

Kowalke v Farmers Mut. Auto. Ins. Co (1958), 3 Wis 2d 389, 88 NW2d 747, 13 NCCA3d 261.

Johnson v St. Louis Public Serv. Co. (1953), Mo App) 256 SW 2d 308.

Aggravation; Davies v Empire International Circuit Court of Cook County No. 04 L 1746 (Sept. 2006). Parvin v Sill, (1985) 93 Ill. Dec.161, 486 N.E. 2d 262, 138 Ill. App. 3d 325. Ill App 5 Dist 1985. Oliver v Yellow Cab Co. 98 F2d 192 (1938, CA7 Ill).

"**Any form** of joint disease, especially degenerative joint disease may be aggravated by trauma[4]."

Arthritis and Allied Conditions (6th ed), Joseph L. Hollander, ed. Lea & Febiger (Philadelphia, 1960) P, 1091.

Arthritis is common, the average person could understand it to be painful, just as a toothache, migraine headache, broken bones, cancer and a heart attack.

Petitioner claims latent/dormant disease.

Dr. MC Carthy testifies; "Herpes zoster ophthalmicus is a latent virus that's in the ganglion cells...dep 16:15-19". "I'm not certain if trauma can or cannot cause it . . ."dep. 17:19-24

Question; "And, **well, I guess** [1]another question is if somebody were hit in the ankle, for example, **that's not going**[1] **to be a cause** of this condition, is that correct[1]?" Dep.18:1-4. **Answer**; "well, you know, I'm really not able to answer that question for you" Dep. 18:4-5. Doctor not ever aware . . . involved in any accidents." Dep. 20:11-24, 21:1-24, 22:1-4. **Question**; "you cannot[1] give an opinion..."dep. 22:5-8, 13-14, 16-20, 22-24, 23:1-1,23:4-8,15-19,22-24.

Petitioner states that **Dr.** Mc Carthy[2] is an eye specialist not a skin disease specialist **he treats 'eyes'. Example**; asking a foot doctor what caused the patient to have an ear ache?

A lawyer is obligated to zealously represent a client, but within the bounds of the rules of law. Rutledge v. St. Anne Hospital 230 Ill App 3d 786,794 (1992).

American Journal of Industrial Medicine. Case report of post-traumatic shingles (herpes zoster). . . . . .(AP. E, p. 14a)

Expert testimony (evidence) herpes zoster. Hawkins v McCain (1954) 239 NC 160, 79 SE2d, 493.

Hilliard v Chicago R. Co. (1911) 163 Ill App 282.

In some cases the **pleadings alone will be sufficient** to meet the requirements of the Rule. Schlagenhauf v. Holder, 9 Fed Rules Serv. 2d 35a.1,

Case 1, 379 US 104, 13 L Ed 2d 152, 85 S Ct 234 (1964).

Jensen v Richardson 93 Ill App 2d 237, 235 NE2d 397. (1968 2d Dist.)

Whenever the injury causing accident is of the kind that the defendant could reasonably foresee, proximate cause is a question for the jury. Lee, 178 Ill.Dec. at 709, 605 N.E.2d at 503 (1992), Smith, 187 Ill.Dec. at 632, 617 N.E.2d at 1353 (1993). The jury may consider the defendant's liability in these cases, even if the arguably foreseeable accident took place for the most far- fetched reasons.

FRE 701. Opinion Testimony by Lay Witnesses. If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Defendant-Appelle's attorneys' deposed five (5) material witnesses, testimony of witness, stated she saw the display unit being pushed into[4] the Petitioner. **Mrs. Heath**, dep,22:19-23, 24:4-7, 26:4-13. **Question**; "how many times would you estimate, I know you probably can't give[1] me an exact amount, but . . . JC Penny

Yorktown . . . prior . . . 2003" Dep. 12:9-14. **Petitioner** to attorney **Question**; "are you asking how many times that month, that year or the duration of her life? . . . " Dep. 12:23-24, 13:1-1. **Witness**; "duration of life?" dep. 13:2-2. **Attorney**; (¶-1 p5) "**Yes**"[3]. Dep. 13:4-4. **Question**; "**In fact you don't know**[1] . . ." Dep. 19:4-5.

Defentant-Appellee stated "Mrs. Heath had no knowledge as to any injuries sustained.

No Lay witness or any other witness can testify to the actual internal injuries received, due to **objective symptoms** such as; abnormal reflexes, Rx for analgesic drugs, need for surgery, epidural injections, and medical test results. Reed v Harvey (1961) 253 Iowa 10, 110 NW2d, 442. Neiner v Chicago City R. Co. (1913) 181 Ill App. F2 192

Circumstantial; Relationship between act and injury.

Hospital E/R and admission records. Within 24 hours of the incident Plaintiff went to the E/R of Gottlieb Hospital with complaints . . . parts of her body. Plaintiff was admitted . . . hospital on November 2, 2003. There is a history from incident.

Witnessed display unit being pushed into Petitioner. **Mrs. Heath**, dep,22:19-23, 24:4-7, 26:4-13.

Dr. Espinosa testified "to leg, back and knee pain cause due to herniated disc", dep. 36-14-19. ". . . 1998 did not show herniated disc at the L2-3 level. . . study I reviewed in my office in April of 2008." Dep. 64:5-8. ". . . she indicated that she actually twisted[4] her back . . . **yes**." Dep. 68:3-6. **Dr. Shea**. testified "According to her history, **she had an injury**[4] . . . **these things go wrong**... ". Dep. 50:11-15

Dr. Lussky testified to the complaints of neck, back, leg pain, and injuring her foot at JC Penney store. Dep.14:20-22. **Dr. Lussky**; testified ". . .she certainly can have a twisting injury to her back[4] It doesn't mean that you're just injuring your foot." Dep. 14:13-15. **Dr. Blonsky**; testified "There are certainly documents at that time, contemporaneous, documents[4], which indicate that she did sustain an injury and she have complaints". . ." dep. 55:4-17 **EMG** results[4]. Normal -1997, abnormal 2006. Plaintiff-Appellant has Loss/Diminished Reflexes after incident[4].

Dr.Shea, dep. 41:4-6. **Dr. Ubilluz,** dep. "she was dragging the left leg...antalgic gait[4] in line...previous assessment I did...shooting pain . . .legs and back . . .**consistent**[4] . . ."dep 34:3-15, " . . .sensory nerves . . .left extremity" Id. 35:4-5, 35:7-9. **Dr. Espinosa,** Id. 51:5-9. **Dr. Molnar**, dep.65:21-23. **Dr. Gafoor**, dep.117:16-17.

Differences [4] in lumbar spine MRIs Sept.1998 **no L2-L3** herniation, Feb. **2006 shows L2-L3** disc herniation. **Dr. Blonsky**"...lumbar spine...1998...significantly more changes[4]...2006", dep. 54:11-14.

Dr. Espinosa "...findings L4-L5...similar...L2-3...was not" dep. 39:3-5. "...1998 did not show[4] herniated...L2-L3...different...study viewed in my office...2008." Dep 64:5-8. **Dr Prinz**"...recent MRI was different[4]...98...disc pathology...exacerbated [4]her condition..."Dep 58:9-23.
Dr. Shea "...bulging ...L2-L3...most recent[4]... February...disk herniation L2-L3..."dep 22:10-13. This evidence should be admissible for other purposes of causation." Leonardi v. Loyola Univ. of Chicago, 168 Ill. 2d 83, 94 (1995).

Petitioner may have been more affected by injury than other people. Injury may have been aggravated by or might not have happened at all except for plaintiff's **peculiar** physical condition. See Owen v Rochester-Penfield Bus Co., 304 NY 457, 108 NE2d 606, 33 ALR2d 1354. (1952)

PERSONAL INJURY AND TORTS.

When medical testimony as to cause of injury is not required. Johnson v. City of Duenweg Fire Dept., 735 SW 2d 364 (1987) award of benefits were upheld in spite of the **inability** of the widow's

medical expert to conclude with reasonable medical certainty.

The Mo. Courts did not consistently mandate use of particular verbal formulas. "Jeff L. Lewin, The Genesis and Evolution of Legal Uncertainty About "Reasonable Medical Certainty," 57 Md. L. Rev. 380, 504. In addition, "**reasonable medical certainty" is not required** "verbal password" in questions propounded to an expert witness. Schiles v. Schafer, 710 SW 2d 254, 262 (Mo. App. E.D. 1986), citing Miller v. Weber, 688 SW 2d 389, 391 (Mo. App. 1985). Kummer v. Cruz, 752 SW 2d 801, 806 (Mo. App. E.D. 1988). It was error to exclude the testimony, when there were other facts tending to show causation.

Trial Court's remanded statement, AP.C p.5a.

On June 25, 208, this court granted partial summary judgment to J.C. Penney. One of Joyce's doctors did testify that Joyce received some injury from the incident at Penney's and that **this caused her pelvic and lumbar pain**. The Court granted Penney's motion and reiterated to Joyce that she would not be permitted to introduce evidence **except** as to the pain and suffering caused by the leg injury. **Petitioner questions this contradiction**, my leg is connected to my pelvic via the hip joint, connected to my spine. Once you have been rammed by something it shakes you skeletal frame. I am not shaped for football or any other physical rough handling. I don't wrestle.

The Court of Appeals state " by the time Joyce sued . . .". See AP. D p.9a. **Petitioner;** "I was trying to mitigate the damages and resolve claims with the insurer. They the insurer has via my authorization for all medical records, none of what has happened or been diagnosed is new to them. What happened to the store's **surveillance camera tape?"**

Contradiction: The trial judge did not want the plaintiff to mention her back, just have a trial on her ankle. Trial date court transcript of 11/16/09 Id. 4:4-9, 5:17-18, 6:10-13, 6:16-17.

Dr. D. Lussky; ". . . on her left foot and she jerked towards the right and then **developed**[4] **back pain and neck pain.". .Id.14:21-22.**

Dr. Espinosa; Question; "and likewise doctor, based upon the same facts, you can't give[1] an opinion to a reasonable degree of medical certainty . . . herniated disc in her lumbar spine specifically . . . being hit in the ankle and grabbing a rack and not falling to the ground?" Dep. 67:21-24, 68:1-2

Answer: "well, depending on exactly how she turned[4]. She indicated that she actually twisted her back[4], and if that's the case, then that's possible, **yes**". Dep. 68:3-6

Physicians. . . testified that **he believed** that plaintiff's ruptured disc was the result of a particular injury. . . testify at trial...incident in question aggravated preexisting injury.

Kokotkwiecz v Leprino Foods Co., App. 4 Dist. 1987, 113 Il Dec 586, 162 ILL.APP.3d 493, 515 NE 2d 395.

Trial court properly **permitted** defendant's expert to testify at medical malpractice trial that **he believed** patient's infection... Schiles Pantaleo v Our Lady of Resurr. Med. Ctr. App 1 Dist.1998, 231 ILL Dec 421, 297 ILL.App.3d 266, 696 NE2d 717, appeal denied 235 Ill.Dec 567, 179 Ill 2d 589, 705 NE2d 440.

Speculation and conjecture are out, but according to the **Illinois Appellate Court, "It is permissible for a medical expert to testify concerning his or her opinions in terms of possibilities or probabilities." Matuszak v. Cerniak, 2004 WL 369267 (3d Dist., 1986).**

The Matuszak Court found no abuse of discretion in a case where a doctor's testimony about his differential diagnosis was based in part on "possibilities". "It is permissible for a medical expert to testify . . . .in terms of possibilities or probabilities. The expert may testify to what might or could have caused an injury despite any objection that the testimony is inconclusive. It remains for the trier of fact to determine the facts and the inferences to be drawn from the testimony. "Our conclusion is consistent with the Illinois Supreme Court decision in Field Enterprises v. Industrial Commission, 37 Ill.2d 335 (1967)." In Heller v. Shaw Industries Inc.,

167 F 3d 146 (3d Cir. 1999), the (3d U.S. Circuit Court of Appeals) held that a medical expert's causation opinion should not be excluded because he or she fails to rule out every possible alternative cause of a patient's medical problem.

Under Illinois law, there is no requirement that a plaintiff produce medical testimony concerning the nature and consequences of the injuries that she sustained. **Mesick v. Johnson**, 141 Ill.App.3d 195,490 N.E.2d 20 (1st Dist., 1986). In **Mesick**, a personal injury action, the plaintiff testified describing results from the collision to her body. The **Messick** court stated "considering the evidence plaintiff sought to introduce in its entirety, it is our view that the jury in the instant case reasonably could have concluded that the conditions at issue were caused by the collision... therefore." 498 N.E.2d at 27.

In the case at bar, petitioner testified as to her reactions upon impact, as well as her treatments received and the onset of immediate symptoms.

There is no requirement that a plaintiff produce medical testimony where she clearly testifies to her injuries and the medical treatment received. **Wiacek v. Hospital Service Corp**. (1973), 15 Ill.App.3d 698, 304 N.E.2d 730; **Turner v. City of Chicago** (1968), 95 Ill.App.2d 38, 238 N.E.2d 100.

Fisher v. Patel, 93 Ill.App.3d 694, 417 N.E.2d 691 (1st. Dist. 1981). In **Scholle v. Continental**

Nat. American Group, 44 Ill.App.3d 716, 358 N.E.2dm 893 (2d Dist. 1977), plaintiff fell from a platform, after which she suffered a fatal aneurysm. In that case the defendant made a similar argument to the case at bar specifically that the medical evidence was insufficient to prove a causal relationship between the fall and the rupture of the aneurysm without speculation. The Scholle court stated that causation could be proved by either **direct or circumstantial** evidence.

Scholle 358 N. E. 2d at 897. The Scholle court stated "Defendant's underlying theory, however, that the medical testimony does not establish causation to reasonable degree of medical certainty causation may not be proved circumstantially, is not well supported.... **Jurors**, however, are permitted to draw inferences based upon their observation and experience in the ordinary affairs of life....

The jury may base its verdict upon a preponderance of all of the evidence not merely that supplied by the expert testimony." Scholle at 898. **It is of no consequence that a medical expert witness fails to use the phrase "to a degree of medical certainty"**, if the expert's testimony reveals that his opinions are based upon specialized knowledge, experience and recognized medical thought. See, Hahn v Union Pacific, No. 5-03-0466 (5th Dist. 2004).

The lower court's ruling which allowed plaintiff to proceed only on the pain and suffering claim

and exclude claims for all specific injuries to her body is **not consistent** with Illinois law as set forth in the cases cited above. For this reason, the lower court erred and abused their discretion in granting partial summary judgment on all issues other than pain and suffering (shown to be contradicted by the courts) and Plaintiff is entitled to have this cause remanded for trial on her specific injury claims and damages.

APPELLATE COURT of Illinois 3rd Dist. (2010)
No. 3-09-0214
Charles Davis v Material Handling No. 05 L 545

Justice MC Dade delivered the opinion of the court:
On appeal, the court reversed the trial court's award of summary judgment on the grounds that it was **not necessary** for the plaintiff to "establish the **precise cause of his injury**" at this stage. *Stewart*, 153 Ill. App. 3d at 1081, 506 N.E.2d at 785. Instead, the court found that the expert's affidavit created a genuine issue of material fact that must be left for the trier of fact to decide.

Stewart, 153 Ill. App. 3d at 1081, 506 N.E.2d at 785. *Varady*, 153 Ill. App. 3d at 1066-67, 506 N.E.2d at 712. Specifically, the court stated: " [Citation.] It was also not necessary for plaintiff to disprove all other possible causes of her fall and injury. There is **no requirement** that plaintiff must disprove all other possible causes." *Tulgetske*, 86 Ill. App. 3d at 1038, 408 N.E.2d at 495. See *Samansky v. Rush-Presbyterian-St. Luke's Medical Center*, 208 Ill. App. 3d 377, 390,

567 N.E.2d 386, 395 (1990). It is also for the trier of fact to determine whether the defective condition of the order picker, or the alleged negligence of plaintiff, Caterpillar, Cat Lift Trucks or Calumet Lift Services, was the proximate cause of plaintiff's injuries. See *Samansky*, 208 Ill. App. 3d at 390, 567 N.E.2d at 395. While defendant alleges that Tate's opinions are "contradicted by the vast majority of evidence," this argument supports our finding that a question of fact exists. Accordingly, we hold that summary judgment should not have been entered on this record.

See *Stewart*, 153 Ill. App. 3d at 1081, 506 N.E.2d at 785. Defendant, however, attempts to argue that summary judgment was proper because: (1) the "trial court properly followed the law," (2) "Tate's opinions are pure speculation and set forth only mere possibilities, (3) "Tate's affidavit is defective and does not eliminate other causes," and (4) plaintiff alleged "two competing theories *** [of] liability." For the following reasons, we disagree with each of defendant's contentions.

First, the above precedent clearly illustrates that the trial court was **incorrect** in holding again, "[t]here is no **requirement** that plaintiff must disprove all other possible causes." *Tulgetske*, 86 Ill. App. 3d at 1038, 408 N.E.2d at 495. Defendant also claims that our holding in *Sanchez v. Firestone Tire & Rubber Co.*, 237 Ill. App. 3d 872, 604 N.E.2d 948 (1992), requires that we affirm the trial court's judgment. We

disagree.

Reversed and remanded.

HOLDRIDGE, P.J., and CARTER, J., concur

FRE 702[2] does not require that medical expert testimony be based on "A Reasonable Medical Certainty". Expert stated at trial it was "hard to determine actually what period of time it could have taken place." U. S. v. Two Elk, 536 F3d 890, 904 n.14.

The Court of Appeals in Tennessee found that jury instructions ... phrase "reasonable degree of medical certainty" were incorrect statements of the law ... confusing to the jury. *Bara v. Clarksville Memorial Health Systems, Inc.*, No. M2001-00682-COA-R3-CV Tenn. Ct. App.(Sept. 12, 2002).

The plaintiff has a legal right to remedy and Justice. Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.... Article I Sec. 12 Right to remedy and Justice (Source: ILL Constitution, AP. G, p18a).

After reading Illinois case law, we conclude that the province of the jury with respect to proximate cause is not as vast as Suzik would make it. He is correct in noting that Illinois courts are reluctant to decide proximate cause as a matter of law; and he correctly notes that this

reluctance is heightened when the issue of proximate cause turns on whether the plaintiff's conduct was a foreseeable result of a dangerous condition created by the defendant.

See, e.g., Lee v. Chicago Transit Auth., 152 Ill.2d 432, 178 Ill.Dec. 699, 708-09, 605 N.E.2d 493, 502-03 (1992), cert. denied, 508 U.S. 908, 113 S.Ct. 2337, 124 L.Ed.2d 248 (1993); Jefferson v. City of Chicago, 269 Ill.App.3d 672, 207 Ill.Dec. 218, 221-22, 646 N.E.2d 1305, 1308-09 (1 Dist.1995); Smith v. Armor Plus Co., Inc., 248 Ill.App.3d 831, 187 Ill.Dec. 625, 632, 617 N.E.2d 1346, 1353 (2 Dist.1993); Laflin v. Estate of Mills, 53 Ill.App.3d 29, 10 Ill.Dec. 927, 932, 368 N.E.2d 522, 527 (1Dist.1977).

As expressed in these cases, this reluctance depends upon the principle that the defendant who creates a dangerous condition can reasonably foresee that the danger could give rise to certain kinds of injury causing accidents.

. . . the injury causing accident is of the kind that the defendant could reasonably foresee, proximate cause is a question for the jury. See, e.g., Lee, 178 Ill.Dec. at 709, 605 N.E.2d at 503; Smith, 187 Ill.Dec. at 632, 617 N.E.2d at 1353. The jury may consider the defendant's liability. . ., even if the arguably foreseeable accident took

place for the most far-fetched reasons. This evidence should still be admissible for other purposes of causation." Leonardi v. Loyola Univ. of Chicago, 168 Ill. 2d 83, 94 (1995).

Petitioner notes the testimonies from depositions written by the court are not all accurate. Remand from district court (Ap. C p.3a-6a). Court; "Joyce had had numerous injuries . . . ..

Respondent's attorney deposing the Petitioner.

Question to petitioner; "prior to Nov 1, 2003. . . conditions you were suffering from. . .?" Id. 27:19-24. **Answer**; "I wasn't suffering." Id. 28:1-1. **Question** to petitioner; "you had completed treating for that back injury in 2003?" Id.28:6-7 **Answer** "Before 2003. I had completed treatment by 2001.: Id. 28:8-9. " in 1997 or 1998. . .suffering that eventually stopped. . ." Id. 29:2-5. **Question** to petitioner; "what is the new injury you are complaining of?" Id. 32:9-10. **Answer**; "new injury are all in my medical diagnoses". Id. 32:11-12. **Question** to petitioner; ". . . being moved by somebody?" Id. 49:21-22. **Answer**; "It had to be moved . . .hit me from the rear it's got to be moving;". Id. 49:23-24, 50:1-1.

Trial court is incorrect. No testimony was given by the petitioner in her deposition that she continued shopping after the incident). **Petitioner**; ". . . .Once I got over that daze. . .not 100%. . . purchased sweater go and sit down". Id.

56:18-24, 57:1-5. **Question** to petitioner; "After you paid for your sweater, tell me where you proceeded next"? Id. 57:14-15. **Answer**; ". . . I sat in Elaine's vehicle. . . came back home. . ." Id. 57: 16-24, 58: 1-1. **Question**; "Did anyone actually witness the incident. . ."? Id.53:17-18. **Answer**; "There are three people. . .". Id. 53:19-22., **Question**; " . . .I'm asking if you know of anybody who actually witnessed the rack come in contact with you?" Id. 53:23-24, 54:1-2. **Answer**; "yes, that's what I'm saying." Id. 54:3-3. **Answer**; ". . . two or three people. . .I put an ad in the paper . . .." Id. 54:12-15. **Question**; " . . .did you have any of this pan . . .neck, legs, arms, fingers, prior . . .".Id. 69:17-20. **Answer**; "nothing like this . . ." Id. 69:21-24

Question; "...about your restrictions. . .can longer do as a result of the incident. . .difficulty doing because of the incident at JC Penney . . ."? Id. 70:16-24, 71:1-2. **Answer**; "yes. . .don't sit in the bathtub, standing presents a problem . . painful . . .washing dishes . . .grocery shop . . .lift both feet one at a time . . . I have to drag my leg, the grooming is difficult . . .I don't have any activities . . .My total everything has changed". Id. 71:3-24, 72:1-9.

Answer; " . . . my first physical therapy session . . .my body was wrapped . . . twice a week for this wrapping . . .just like a mummy . . .." Id. 72:16-24. **Answer**; "It helped . . .muscle spasms in my hands and feet . . .don't have control . . .fingers . . .crossing and the hands

twisting . . .the toes. That was stopped the physical therapy. Physical therapy itself is painful, but I make all attempts . . .second session". Id. 73:2-17.

All back, leg, neck, knee, and head pains are not the same nor is the cause for the pain the same. **Dr. Gafoor**; "I cannot assess...very hard to say.... same pain or new pain or different pain," Id. 69:14-16.

Dr. Espinosa;"...**no sign of malingering**..." dep. 47:13-14. **Question**; "you noted. . . your opinion that the cause. . .back pain, leg pain, due to herniated disc. . . ?" Id. 36:14-18. **Answer**; "that's correct." Id. 36-19-19. **Question**; ". . .knee pain . . . due to herniated disc. . .." Id.36:23-24, 37:1-4. **Answer**; "yeah". Id. 37:5-5. **Answer**; " . . .exactly how she turned . . .actually twisted her back . . . yes." Id. 68:3-6.

Dr. Blonsky; ". . . There are certainly documents at that time ,contemporaneous, documents, . . . " Id. 55:4-17. **Dr. Lussky**; " ...she certainly can have . . . injury to her back. . . . you're just injuring your foot." Dep. 14:13-15. **Dr. Ubilluz**; "the accident...pushed them...they are symptomatic now." Id. 16:14-15 **Dr. Shea**; " ...fact...history states...injury and after injury...had these complaints...direct injury caused...her history." Dep. 49:7-10.

Dr. Prinz; "my opinion. . . lower extremity symptoms are multi factorial . . . disk pathology that was causing her symptoms." Id. 57:8-16.

Prinz: " . . . cyst would cause cause . . . symptoms:. Id. 49:10-15. **Prinz**; " . . . I believe that . . . (cyst behind knee) can be caused indirectly by trauma[4]. . . I do believe that that can either cause or **exacerbate**. . . ." Id. 43:15-19. **Dr. James**; "we found . . .**positive**. . .nerve pressure. . .spine area due to herniation . . .". Id.. 25:24-24, 26:1-4. ". . .confirmation. . .spine between L3 and L5...positive". Id. 26:11-21.

There is a major difference between a disc bulge and a disc herniation . The physicians verified that.

The Petitioner's feet are her body's foundation. The court speaks on a minor car accident in which Petitioner's **sciatic was aggravated not injured in 1992. There were no reported lumbar spine or cervical spine disc herniations. Nor were there any loss of reflexes. I continued working, swimming, dancing and performing other activities, bodies do heal.**

The Respondent's attorney told one physician he was not able to give an opinion based on the fact, his first (1st) visit with the Petitioner was (3) three years after accident. **There should be no reason for why** the Respondent's attorneys did not inform[3] trial court, or the court of appeals, or the insurer[3] that the request for the Petitioner to have a physical medical exam, would not be fair or right based on the fact, her first (1st) visit would be (5) five years after the accident, and the physicians would not be able to give an opinion to a reasonable medical

certainty. This conduct demonstrates prejudicial to the administration of Justice and the Petitioner.

After this statement was presented (in question) to the Petitioner's treating physician, there is now a heavy doubtfulness on the exam and opinions of the physicians chosen for her to see (5) five years after the accident. These physicians would be less able (less credible) to give a reasonable opinion. Why would these physicians' **exam and opinion** be trustworthy five (5) years after the accident? They were hired and the Respondent's attorney brought about a **fact**. The Petitioner's physician examined and treated her continuously. Campbell v State Farm Mutual (1998) No. 890905231, 3rd judicial Dist. Court Salt Lake City, Utah. Court found ample evidence.

Violation of rules in law more than 50 times. What other plaintiffs have they treated in this manner?

Petitioner motioned the trial court for Deceit and Fraud on the material facts submitted by Defendant-appelle's attorneys' (4/24/08) months before the Judge's ruling on summary judgment (6/25/08). (No review was done). Motion Denied.

735 ILCS 5/2-617 (ch.110) (AP. G. p.17a) Seeking wrong remedy not fatal. Where relief is sought and the court determines, . . . pleadings, or on motion for summary judgment . . . the plaintiff has pleaded or established fact which

entitled the plaintiff to relief but that the plaintiff has sought the wrong remedy, the court shall permit the pleadings to be amended, on just and reasonable terms, and the court shall grant the relief to which the plaintiff is entitled . . . or upon the evidence. . . . (Motion Denied).

See, Mark D. Howard, Proving Causation with Expert Opinion: How Much Certainy is Enough?,

74 Ill. B.J. 580, 584 (1986). "**Most experts, other than professional witnesses, are unfamiliar with the reasonable certainty language used in court.**"

CONCLUSION

Petitioner respectfully requests for the foregoing reason this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit. Reverse the lower courts order granting of a partial summary judgment in favor of the Respondent due to all violations of the rules in law. And further requests that this Court remand the case back to the lower court for trial on all claims set forth in Petitioner's complaint and however else this court thinks is just on all issues, including expenses incurred.

Respectfully Submitted,

Josephine Joyce, Pro Se, Petitioner

APPENDIX-A

United States Court of Appeals for the Seventh Circuit

August 19, 2010 Case No. 09-4031

Before: Frank H. Easterbrook, Chief judge.

Richard A Posner, Circuit judge.

David F. Hamilton, Circuit judge.

Appeal from the U.S. District for the Northern District of Illinois, Eastern Division.

No. 05 C 6596 Harry D. Leinenweber, Judge

Josephine Joyce Plaintiff-Appellant
V.

J.C. Penney Corp. Inc. Defendant-Appellee.

Request for Rehearing En Banc

ORDER

The plaintiff-appellant filed a petition for rehearing on August 16, 2010. All the judges on the panel have voted to deny the petition. The petition is therefore DENIED.

APPENDIX B

US Court of Appeals for the Seventh Circuit.

Order of April 29, 2010, Before Circuit Judge Terence T. Evans Case No. 09-4031

J. Joyce-Plaintiff

v.

JC Penney Corp. Inc.Defendant.

Originating case: District Court No: 1:05 cv 06596

It is ordered that this case is REMANDED to the district court for the limited purpose of requesting that district court provide a statement of reasons for the dismissal of the plaintiff's complaint. See Cir. R. 50. As the case is fully briefed and ready for disposition, the district court is requested to provide the statement as soon as is possible.

APPENDIX C

United States District Court, Northern District of Illinois.

Case No. 05 C 6596 Date 5/4/2010.

Hon Leinenweber Dkt. Entry Text: On limited remand from US Court of Appeals of the Seventh Circuit under Circuit Rule 50, the Court states its reasons for dismissing Plaintiff's complaint.

Plaintiff Josephine Joyce filed this tort action in state court against JC Penney Corp. alleging injuries from an incident occurring on November 1, 2003. Plaintiff claimed that JC Penney store employees negligently pushed a display unit with shelves into her leg. Defendant JC Penney removed the case to this Court.

On June 25, 2008, this Court granted partial summary judgment to JC Penney. See Dkt. #133. To summarize the Court's ruling, the Court found that Joyce had had numerous injuries and illnesses prior to the incident at Penney's.

Joyce alleged that many of her current medical conditions were caused or aggravated by the accident at the Penney's store. None of Joyce's own physicians, however, could give an opinion **to a reasonable degree of certainty** that the JC Penney incident caused a cyst behind Joyce's knee, Herpes zoster ophthalmicus in her eye, depression, injuries to her back, left leg[1] and lumbar and cervical spine. The Court granted summary judgment in favor of Penney's on these injuries, finding that Joyce had failed[1] to establish a genuine issue of fact regarding Penney's proximate causation.

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[1]**Dr. Espinosa Answer**: "...incident of Nov. 2003 caused herniated disc . . ." Dep. 65:2-14. **Question**; . . . it was your opinion that the cause of Ms. Joyce's **back pain and leg pain, as well as her leg pain, was due to the herniated disc** at the L2 through L3, correct. Id. 36:14-18. **Answer; That's correct.,Dr. Shea Answer**; . . . fact . . . history states[4]...injury and after injury...had these complaints...**direct injury caused**...her history**Dr Prinz**"...recent MRI was different[4]...98...disc pathology...exacerbated [4]her condition..."Dep 58:9-23.

The Court denied Penney's motion for summary judgment, however, with respect to Joyce's claim for pain and suffering. One of Joyce's doctors did testify that Joyce received some injury from the incident at Penney's and that this caused her pelvic and lumbar pain, although another of Joyce's doctors stated that he could not give an opinion to a **reasonable degree of certainty** that Joyce sustained any type of injury from the incident[1].

Both parties appeared for trial on Nov. 16, 2009. Before trial, Penney's moved, inter alia, to enforce the summary judgment of June 25, 2008 and thereby bar Joyce from presenting evidence related to the issues for which partial summary judgment was granted. Joyce objected to the motion, arguing that she wanted the trial to be about everything that had happened regarding her health[1] since the date of the Penney's incident. The Court granted Penney's motion and reiterated to Joyce that she would not be permitted to introduce evidence[1] **except** as to the pain and suffering caused by the leg injury.

Joyce responded that she did not come to court for a trial concerning only her ankle[1]. She insisted the trial should be about her whole body[2]. Joyce asserted that her doctors had reviewed their reports and had more information to add. The Court responded that it was too late to present new evidence. See FRCP 26(a)(3)(B), 37(c)(1). The Court informed Joyce that if she did not wish to proceed to trial in accordance with the summary judgment ruling, it could dismiss the case with prejudice, allowing Joyce to appeal the summary judgment ruling. Joyce elected to dismiss the case rather than proceed to trial. The Court dismissed the case with prejudice in order to allow Joyce to appeal the Summary judgment ruling. See FRCP 41(a) (2) (allowing trial court to dismiss an action at plaintiff's request on terms the court considers proper). See also Ash v Wallenmeyer, 879 F.2d 272, 274 (7th Cir. 1989) (approving plaintiff's ability to pursue appeal after plaintiff voluntarily dismissed case in order to appeal ruling that denied his major claims).

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[2] Court transcript excerpt: Ms Joyce "They are part of my body" Id,6:9-9

APPENDIX D

United States Court of Appeals for The Seventh Circuit No. 09-4031

Josephine Joyce Plaintiff-Appellant

v.

J.C. Penney Corp. Inc. Defendant-Appellee

Final Judgment July 23, 2010
Before: Frank H. Easterbrook, Chief Judge
Richard A. Posner, Circuit Judge David F. Hamilton, Circuit Judge Originating case.
No: 1:05-cv-056596

Northern District of Illinois, Eastern Division District Judge Harry D. Leineweber

The judgment of the District Court is Affirmed with cost, in accordance with the decision of this court entered on this date.

ORDER

After examining the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on

the briefs and the record. See Fed. R. App. P. 34(a)(2)(C). Company won a partial summary judgment that excluded from the case[1] most of Joyce's asserted injuries. To obtain review of that ruling, Joyce then voluntarily moved to dismiss with prejudice the remainder of her case. See Fed. R. Civ. P. 41 (a)(2). We affirm the judgment.

We first determine whether we have appellate jurisdiction. When a plaintiff voluntarily forgoes with prejudice the remainder of a case to secure immediate appellate review of a contested and otherwise interlocutory ruling, the proceedings in the district court are finished. And here, because those proceedings are over, appellate jurisdiction is secure. See McMillian v. Sherton Chi. Hotel & Towers, 567 F. 3d 839, 843 (7th Cir. 2009); Ash v Wallenmeyer, 879 F2d 272, 273-74 (7th Cir. 1989). We turn then to the merits.

Joyce claims that in November 2003 an employee at one of J.C. Penney's stores negligently **rammed** a rolling display rack into her ankle, causing her to twist and fall. Joyce

continued shopping, but sought treatment the next day for pain her left leg and back. Drs. Observed tenderness in her lower back and a possible sprain to her foot or ankle, but concluded that the pain her leg was "not anatomically related"[1] to her foot or ankle injury. **By the time she sued**, Joyce attributed several other medical conditions to the collision[1]. These included a cyst behind her left knee, a viral infection in her left eye, and the aggravation of many preexisting conditions, such as: an injured sciatic nerve and other lower-back and leg injuries (from a car accident and another fall years earlier), bulging discs in her spine, a degenerative spinal disease, arthritis, anxiety, and possible depression (all diagnosed before the store accident). For her alleged injuries, she sought three million dollars in damages. No expert was **willing to testify to a reasonable degree of medical certainty** that the collision at the store had caused[1] or exacerbated any of Joyce's injuries or conditions, except for some pain in her back and left ankle. Both parties moved for summary judgment. In granting J.C. Penney's

motion in part, the district court noted that Joyce could point to no medical evidence linking her cyst, viral infection, depression, or arthritis to the collision at the store. As for Joyce's other back, neck, and leg conditions[1] (such as her bulging discs, spinal disease, and injured sciatic nerve), the district court observed that no medical expert [1] was willing to attest to more than a mere possibility that these were caused or aggravated by the clothes-rack crash. Thus, the district court ruled, no reasonable jury could find that she had established causation[1] under Illinois law, which requires "reasonable certainty", and not just a chance, that J.C. Penney caused these injuries[1]. Ciomber v. Coop. Plus, Inc., 527 F.3d 635, 640 n.1 (7th Cir. 2008); First Springfield Bank & Trust v. Galman, 720 N.E.2d 1068, 1072 (Ill. 1999). Only the evidence of the back and ankle pain that followed the store accident, the district court concluded, required a trial.

On appeal Joyce argues that under llinoislaw her lay opinion and her medical

expert's opinions about the mere possibility of causation[1] were enough to defeat summary judgment. Under Erie R.R. v Tompkins, 304 U.S. 64 (1938), federal courts in diversity cases like this one apply state substantive law on the requirement of causation, but follow the federal law of evidence, Schindler v. Seiler, 474 F.3d 1008, 1010 (7Th Cir. 2007). Here, Joyce's evidence[1] would not permit a reasonable jury to conclude that the collision in the store caused or aggravated any[1] of the maladies that the district court said were unrelated to the collision. First, Joyce did not produce any competent evidence[1] that the collision caused her cyst, viral infection, depression, or arthritis. Her lay views about the origins of these medically complex problems do not suffice. See U. S. v. York, 572 F.3d 415, 420 (7th Cir. 2009) ("Opinions or inferences based on scientific, technical, or other specialized knowledge with the scope of Rule 702 are not admissible as lay testimony under Fed. R. Evid. 701"). Second, although some of Joyce's doctors were unwilling to rule out the possibility that the collision worsened her

earlier back, neck, and leg injuries[1] speculation about causation will not defeat summary judgment. See Wintz v Northrop Corp., 110 F3d 508, 515 (7th Cir. 1997) (Ill. Law); Zimmerv Celotex Corp., 549 N.E.2d 881,883 (Ill. App. Ct. 1989); Lindenmier v City of Rockford, 508 N.E.2d 1201, 1207 (Ill. Aoo. Ct. 1987). The only competent evidence that Joyce presented was that the collision created additional back and ankle pain, but Joyce chose to abandon a trial to recover damages for only that pain. Accordingly, we Affirm the judgment of the district court.

APPENDIX E

Textbook Of Disorders and Injuries Of the Muscouloskeletal System. 2 Ed.

Robert B. Saltor, M.D.

Degenerative Joint Disease in The Lumbar Spine pg. 227 Excerpt; Both degenerative disease disc disease and degenerative joint disease represent an exaggeration of the normal aging process and **may be aggravated by injury**, deformity and pre-existing disease of the spine.

Differential Diagnosis of Low Back Pain pg .232 part 2. Excerpt; **By no means**, however, is all low back pain caused by degenerative joint disease or by degenerative disc disease, let alone disc herniation. Therefore, each patient who complains of low back pain, with or without sciatica merits careful assessment on the basis of the history, physical examination, radiographic examination and laboratory investigation.

American Journal of Industrial Medicine.

Vol. 38, Issue 1, pages 108-111 July 2000

Patrick M Foye MD, Todd P. Stitik MD, Scott F. Nadler DO, Boqing Chen MD PhD.

Case report of post-traumatic shingles (herpes zoster).

Case History: A 50 year old female hospital employee who, while working, sustained an acute, traumatic hyperextension injury to her right wrist, hand and fingers. Although she initially responded to treatment for flexor tendinitis, she suddenly developed shingles in the right C5-C6 dermatomes. She was treated with famcyclovir and her skin lesions resolved, but post-herpetic neuralgia persisted.

APPENDIX F

Physicians, Medical Field. Date of Deposition

Dr. E. Blonsky,Neurology & Pain Med., 6/26/07.

Dr. F. Espinosa,General Neurosurgery, 7/31/07

Dr. M. Gafoor, Family Practice, August 22, 2007.

Dr. N. Ivancevic, Podiartic, August 16, 2007.

Dr. R. James, Chiropractor, August 23, 2007.

Dr. K. Lofland, Psychologist, June 26, 2007.

Dr. D. Lussky, Neurologist, June 25, 2007.

Dr. T. MC McCarthy, Ophthalmologist, August, 24/2007.

Dr. R. Molnar, Anesthesia/Pain Med., 8/08/2007.

Dr. P. Prinz, Orthopedic, September 24, 2007.

Dr. J. Shea, Prof. & Treating Physician of Neurosurgery, Nov 07, 2007.

Dr. H. Solomon, OB/GYNE, October 12, 2007.

Dr. R. Ubilluz, Neurologist, June 21, 2007.

APPENDIX G

(735 ILCS 5/8-1006) (Ch. 110, par. 8-1006)

Sec. 8-1006. Evidence as to laws of other jurisdictions. Any party may also present to the trial court any admissible evidence of such laws, but, to enable a party to offer evidence of the law in another jurisdiction or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse parties either in the pleadings or otherwise.

735 ILCS 5/-105 (Ch. 110, par. 1-105)

Sec. 1-105. Enforcement of Act and rules. The Supreme Court may provide by rule for the orderly and expeditious administration and enforcement of this Act and of the rules, including the striking of pleadings, the dismissal of claims, the entry of defaults, the assessment of cost, the assessment against an offending party of the reasonable expenses, including attorney's fees, which any violation causes another party to incur, or other action that may be appropriate. (Source: P.A. 82-280)

735 ILCS 5/2-617. Seeking wrong remedy not fatal. Where relief is sought and the court determines, on motion directed to the pleadings, or on motion for summary judgment or upon trial, that the plaintiff has pleaded or established facts which entitled the plaintiff to relief but that the plaintiff has sought the wrong remedy, the court shall permit the pleadings to be amended, on just and reasonable terms, and the court shall grant the relief to which the plaintiff is entitled on the amended pleadings or upon the evidence. In considering whether a proposed amendment is just and reasonable, the court shall consider the right of the defendant to assert additional defenses, to demand a trial by jury, to plead a counterclaim or third party complaint, and to order the plaintiff to take additional steps which were not required under the pleadings as previously filed. (Source: P.A. 82-280)

U. S. Constitution Amendment. XIV, sec. 1 Amend. XIV, sec. 1: All persons born of aturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The State of IL. Constitution. Article I. Sec. 2 Due process and equal protection under the law.

Article I, Sec. 12 Right To Remedy And Justice.

Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.

APPENDIX H

U.S. District Court Rules (N.D. Ill.)

LR83.54.4. Respect for Rights of Third Persons.

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

LR83.55.1 Responsibilities of a Partner or Supervisory Lawyer.

(2) the lawyer is a partner in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Sanctions Appropriate. Where appellee's brief asserted not only that opposing counsel misstated the law, but also that he misstated the record, allegations such as this were not to be

made lightly as they challenged the integrity of a fellow officer of the court ; the court's agreement with appellee's view of the law would not forgive a false assertion that opposing counsel lied to the court. In re West, 22 F.3d 775 (7th Cir. 1994).

Nos. 92-8029, 92-8175. US CA Eleventh Circuit April 9, 1993. 39 FRD at 56:10.

Appeals from the United States District Court for the Southern District of Georgia.

Before FAY and ANDERSON, Circuit Judges, and RONEY, Senior Circuit Judge.FAY, Circuit Judge:

The defendants and their attorneys appeal sanctions imposed on them for grave and repeated abuses of the discovery process. . . . the district judge, pursuant to FED.R.CIV.P. 37(b)(2)(C), struck their answers and entered a default judgment against them on the issue of liability. Pursuant to 28 U.S.C. § 1927 and FED.R.CIV.P. 26(g), he ordered the defendants and their attorneys held jointly and severally responsible for the plaintiff's costs and

attorneys' fees. The district judge's order imposing sanctions is, in all respects, AFFIRMED. RONEY, Senior Circuit Judge, concurring.

I concur in the decision of the court and the analysis of the issue presented. . . .current discovery process. It is my impression, . . ., that the improper discovery activity which unnecessarily prolongs and raises the cost of litigation is the result of abuses by both plaintiffs and defendants and their lawyers, and is partly caused by the failure of busy courts to properly monitor the use of discovery procedures.

I would hold all parties and lawyers to a higher standard of good faith in the discovery process, ... The motion for a new trial asserted other misconduct including 1) making assertions of facts not proved, 2) attempting to improperly influence the jury by the introduction of statements into argument on matters not in evidence under the pretext of laying a foundation for impeachment which were never offered, 3) examining witnesses on an exhibit which was never offered in evidence,

4) repeatedly making known meritless objections both in the trial and pre-trial phases of the case for the purpose of harassment, 5) falsely stating to the court that he did not have a deposition...had under his control . . .(6) objecting to the introduction of a deposition on the ground that he did not authorize it when it was taken under order of court ... In response to some of these acts, the court noted, 39 F.R.D. at 596:8 . . . Judge Robson was correct in granting the motion for a new trial. The legal authority set out in Judge Robson's opinion is sufficient to support his determination.

39 F.R.D. at 594-595. . . . we rely on Mangan v. Broderick & Bascom Rope Co., 351 F.2d 24, 29, 31 (7th Cir. 1965), Ryan v. Monson, 33 IllApp.2d 406, 412-413, 415-417, 424 and 427-428 (1st Dist. 1961), and Cline v. Kirchwehm Bros. Cartage Co., Inc., 42 Ill.App.2d 85, 191 N.E.2d 410 (1963), all cases in which new trials were ordered due to improper trial tactics and unprofessional conduct on the part of the present respondent. We find that Judge Robson was correct in holding, 39 F.R.D. at 596:10

After the conclusion of the trial before Judge Robson, the plaintiff filed a motion to assess

costs and attorneys' fees against defendant Las Vegas Hacienda, Inc., and Reese Hubbard jointly and severally. The court entered a judgment order against defendant and counsel in the sum of $x,xxx.xx.